

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

TERESA STRINGER, KAREN BROOKS,  
WILLIAM PAPANIA, JAYNE NEWTON,  
MENACHEM LANDA, ANDREA  
ELIASON, BRANDON LANE, DEBBIE  
O’CONNOR, MICHELLE WILLIAMS, and  
WAYNE BALNICKI, Individually and on  
Behalf of All Others Similarly Situated,

Plaintiffs,

v.

NISSAN OF NORTH AMERICA, INC., and  
NISSAN MOTOR CO. LTD.,

Defendants.

**CLASS ACTION**

Case No. 3:21-cv-00099

District Judge William L. Campbell  
Courtroom A826

Magistrate Judge Barbara D. Holmes  
Courtroom 764

**UNOPPOSED MOTION FOR ORDER TO SHOW CAUSE WHY CASES FILED BY  
CLASS MEMBERS SHOULD NOT BE DISMISSED WITH PREJUDICE**

Defendant Nissan North America, Inc. (“NNA”), by and through its counsel, moves for an order to show cause why Released Claims asserted by Class Members in litigation based in whole or in part on an alleged defect in the continuously variable transmission (“CVT”) should not be dismissed.

1. In its Order and Judgment Granting Final Approval of Class Action Settlement and Award of Attorneys’ Fees, Costs, Expenses and Representative Service Awards (“Final Approval Order”) dated March 23, 2022 (ECF No. 126), this Court certified a settlement class and gave final approval to the Settlement Agreement. It also approved and attached a list of persons who would otherwise be Class Members but who had excluded themselves by timely opting out of the class.

2. The Final Approval Order also provided that each Class Member released and forever discharged NNA and all Related Parties from any and all Released Claims, and that Class

Members were “enjoined from asserting, commencing, prosecuting or continuing to prosecute, either directly or indirectly, any Released Claims against any of the Released Parties” (except that Class Members may pursue Future Transmission Claims, which are governed exclusively by the Expedited Resolution Process provided for in the Settlement Agreement).

3. Released Claims are defined in Paragraph 35 of the Settlement Agreement, in relevant part, as “any and all claims, demands, rights, damages, obligations, suits, debts, liens, contracts, agreements, and causes of action of every nature and description whatsoever, ascertained or unascertained, suspected or unsuspected, accrued or unaccrued, existing or claiming to exist, including those unknown, both at law and equity which have been brought, which might have been brought, and which might be brought in the future upon the happening of certain events, against the Released Parties, or any of them, ***based upon or in any way related to transmission design, manufacturing, performance, or repair of Class Vehicles***, including but not limited to all claims asserted in the Lawsuits, whether based upon breach of contract, violation of a duty sounding in tort, violation of any state or federal statute or regulation, violation of any state consumer protection statute or regulation (including any lemon law statute or regulation), fraud, unjust enrichment, money had and received, restitution, equitable relief, punitive or exemplary damages and civil penalties and fines or any other claims whatsoever under federal or state law.” (Emphasis added).

4. The Court entered Final Judgment on March 23, 2022.

5. NNA has now identified numerous Class Members who are not on the approved list of opt outs, but who have nevertheless filed actions against NNA asserting claims based on alleged defects in the CVT, and are continuing to prosecute those claims. These Class Members,

who appear to be violating the injunction issued by this Court by pursuing Released Claims, are listed on **Exhibit A**.

6. In the Final Approval Order, this Court retained continuing jurisdiction over this Settlement, including “any suit, action, proceeding or dispute arising out of or relating to this Order and the Settlement Agreement, or the applicability of the Settlement Agreement.” Therefore, this Court has jurisdiction to enforce the settlement and its injunction as to Class Members who did not opt out of the Settlement.

7. To effectuate the terms of the Settlement and this Court’s Final Approval Order and Final Judgment, NNA requests that this Court enter an Order providing that within 30 days of receipt of the Order, Class Members listed on Exhibit A shall either (a) file a notice or stipulation of dismissal of any and all Released Claims with prejudice with the court in which their action is pending, or (b) submit to NNA evidence showing why this Court should not enforce the release applicable to Class Members, the judgment entered by this Court, and this Court’s injunction. Plaintiffs and Class Counsel do not object to NNA’s request.

8. To the extent Class Members respond to the Order by dismissing their claims, it will relieve this Court of the need to rule on motions to enforce the settlement and the injunction as to those Class Members. To the extent that Class Members respond by submitting evidence to NNA, the Order will allow NNA to evaluate the merits of each claim before moving this Court to enforce the Settlement and the injunction.

9. A Proposed Order is submitted with this Motion as **Exhibit B**. The Proposed Order is similar to a show cause orders entered by Judge Breyer in the *In Re: Volkswagen “Clean Diesel” Marketing, Sales Practices, and Products Liability Litigation*, Case No. 3:15-MD-02672 (N.D. Cal.) [ECF No. 7360], by Judge Birotte in *Vargas, et al. v. Ford Motor Co.*, Case No. CV12-08388

(C.D. Cal) [ECF No. 318], and by Judge Richardson in *Weckwerth, et. al. v. Nissan North America, Inc.*, Case No. 3:18-cv-00588 (M.D. Tenn.) [ECF No. 213].

10. NNA agrees to serve Notice of the Order by first-class mail on counsel for Class Members listed on **Exhibit A**.

For all of the foregoing reasons, NNA respectfully requests that this Court enter the Order attached as **Exhibit B**.

Dated: October 14, 2022

Respectfully submitted,

/s/ John S. Hicks

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## **CERTIFICATE OF SERVICE**

I hereby certify that on October 14, 2022, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record via transmission of Notice of Electronic Filing generated by CM/ECF.

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